IN THE

# Supreme Court of the United States

OF AMERICA.

## Error to the Supreme Court of the State of Ohio.

CORWIN D. BACHTEL,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 446.

CORWIN D. BACHTEL,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 447.

HARVEY H. MILLER,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 448.

WILLIAM L. DAVIS,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 449.

CHARLES H. VAN HORN,
Plaintiff in Error,
vs.
R. FRANK WILSON,
Sheriff of Stark County, Ohio,
Defendant in Error.
Case No. 450.

BRIEF
FOR
DEFENDANT
IN ERROR.

The Plaintiff in Error, Corwin D. Bachtel, was the cashier; William L. Davis, the vice president, and Charles H. VanHorn, the teller of The Canton State Bank, a corporation, incorporated under the act known as "The Free

Banking Act of 1851, of the State of Ohio," and were indicted by the Grand Jury of Stark County, Ohio, under the 30th section of "The Free Banking Act," passed March 21, 1851, as amended April 24, 1879, and further known as Section 3821-85, of the Revised Statutes of Ohio. Harvey H. Miller was indicted under R. S. of Ohio, Section 6804, as an aider and abettor. After the Court of Common Pleas of Stark County, Ohio, had overruled a demurrer to these indictments and before any trial of the Plaintiffs in Error under said indictments, the Plaintiffs in Error brought a Habeas Corpus proceeding against the Defendant in Error in the Circuit Court (an intermediary Court between the Common Pleas and the Supreme), claiming that Revised Statutes of Ohio, Section 3821-85, applied only to officers and agents of "Free Banking Institutions," and hence was class legislation, prohibited by Section 26 of Article 2 of the Constitution of Ohio, and likewise by Section 1, Article 14, of the Constitution of the UNITED STATES. Upon a hearing of this matter before the Circuit Court (composed of three Judges), that Court unanimously decided against the Plaintiffs in Error. Plaintiffs in Error then prosecuted error to the Supreme Court of the State of Ohio, for the purpose of reversing the Circuit Court. The Supreme Court of Ohio (composed of six Judges) unanimously sustained the holding of the Circuit Court and held the act not violative of either of the State or UNITED STATES Constitution, and these causes are now in this Court for the purpose of reversing the Supreme Court of the State of Ohio.

The decision of the Supreme Court of Ohio conclusively settled all questions involved in these cases, excepting the question as to whether or not Sections 3821-85 of the Statutes of Ohio contravenes Section 1, Article 14, of the Constitution of the UNITED STATES.

In order to determine this question, it will be necessary to construe Section 1, Article 14, of the Constitution of the UNITED STATES, which is as follows: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

Revised Statues of Ohio, 3821–85 reads as follows: "Every president, director, cashier, teller, clerk or agent of any Banking Company, who shall embezzle, abstract, or willfully misapply any of the moneys, funds, or credits of any such Company, or shall, without authority from the directors, issue or put forth any certificate of deposit, draw any order or bill of exchange, make any acceptance, assign any notes, bonds, drafts, or bill of exchange, mortgage, judgment or decree, or shall make any false entry in any book, report, or statement of the Company, with intent in either case to injure or defraud the company, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the Company, or any agent appointed to inspect the affairs of any banking company in this state, shall be guilty of an offense, and, upon conviction thereof, shall be confined in the penitentiary, at hard labor, not less than one year, nor more than ten years.

This Court has the right to place a final and conclusive construction upon Section 1, Article 14, of the Constitution of the UNITED STATES; but the Supreme Court of the State of Ohio has the right to place an ultimate and conclusive construction upon Revised Statutes of Ohio, Section 3821–85.

96 U. S. 499.
113 U. S. 465.
182 U. S. 503.
193 U. S. 10.
193 U. S. 504.
98 U. S. 365 and 366.
121 U. S. 391 and 392.
190 U. S. 412.
193 U. S. 532 and 549.

The Supreme Court of Ohio did not report this case; but the question was before the Court as to whether or not the words, "Any Banking Company" and "Any Banking Company in this State" embraced all Institutions, other than National Banks, doing banking business in this State, or was confined solely to banks organized under "The Free Banking Act." If the Supreme Court held that the words "Any Banking Company" embraces all Banking Institutions in the State of Ohio, other than National Banks, then clearly Plaintiffs in Error would have no just grounds to claim an unconstitutional classification.

## ANY BANKING COMPANY.

Plaintiffs in Error claim that the words "Any Banking Company" is confined to Free Banking Institutions, not because of the language used, but solely because of the position in which this Section is found in the Statutes of Ohio; whilst our contention is that the words "Any Banking Company" means exactly what the words import. We contend this:

1st. Because the words "Any Banking Company" are plain, clear, concise and unambiguous, and when such is the case, they explain themselves and do not admit of any construction other than their natural import.

66 O. S. 621.
66 O. S. 434.
67 O. S. 244.

2nd. Because the Legislature intended the words "Any Banking Company" to embrace all Banking Institutions in the State of Ohio, as there is no other section

of the Statutes of Ohio punishing any officer of any Banking Institution for doing the things prohibited by Section 3821-85, and if this section does not embrace the officers of all banking institutions, then the officers of all Banking Institutions, excepting those of "Free Banking Institutions," can abstract or willfully misapply the moneys, funds and credits of the Banks to which they are connected, without punishment.

3rd. Because Revised Statutes 3821-85 has no apparent connection with and in no wise modifies or affects any of the other sub-divisions of Revised Statute 3821 and might have been placed in the Criminal Code, or some other part of the Statute, than that in which it is, without affecting any of the other sub-divisions of R. S. 3821, and without, in any way, impairing or making its meaning obscure.

## IS R. S. 3821-85 IN CONFLICT WITH SECTION 1, ARTICLE 14, OF THE CONSTITUTION OF THE UNITED STATES.

If the words "Any Banking Company" do not mean what we contend for them, but on the other hand are restricted to "Free Banking Institutions," then is the act in conflict with Section 1, Article 14, of the Constitution of the United States? If it is in conflict, it must be either with that portion which reads as follows: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;" or "Nor deny to any person within its jurisdiction the equal protection of the laws."

In the Slaughter House cases 16 Wall. 36, approved 136 U. S. 448; 146 U. S. 37, 38; 153 U. S. 539; 169 U. S. 676; 176 U. S. 587, 591 and 593, it was held that the privileges and immunities of citizens of the UNITED STATES were those privileges and immunities which a citizen might claim under the Constitution, Treaties, or

Statutes of the UNITED STATES. Now clearly the Plaintiffs in Error would have no right to embezzle, abstract or willfully misapply the funds of their bank, or assign its notes, or make false entries in its books, or make false reports to the auditor of State, by virtue of the Constitution, Treaties, or Statutes of the UNITED STATES, and hence it would follow that R. S. 3821–85 would not be in conflict with that clause.

This Court has held that the equal protection guaranteed by the Constitution means that all persons of the same class and under the same conditions shall be treated with impartiality. This Court has said that:

"The states have the power of classification, and it is not within the scope of the 14th amendment to withhold from the states that power of classification, and if the law deals alike with all of a certain class, it is not obnoxious to the charge of a denial of equal protection."

Hayes vs. Missouri, 120 U. S. 68.
Railroad Co. vs. Mackey, 127 U. S. 205.
Walston vs. Nevin, 128 U. S. 578.
Bell's Gap Railroad vs. Pennsylvania, 134 U. S. 232.
Pacific Express Co. vs. Seibert, 142 U. S. 339.
Giozza vs. Tiernan, 148 U. S. 657.
Columbia-Southern Railway vs. Wright, 151 U. S. 470.
Marchant vs. Penn. Railroad, 153 U. S. 380.
St. Louis & San Francisco Railway vs. Mathews, 165 U. S. 1.
Gulf Colo. & Santa Fe Railway vs. Ellis, 165 U. S. 150.
101 U. S. 22, 31, 33.
115 U. S. 337.

"A State may classify persons and objects for the purpose of legislation, providing the classification is based on proper and justifiable distinctions, considering the purpose of the law and the means to be observed to effect that pur-

pose, and such a law is not in conflict with the equal protection clause of the 14th amendment to the Constitution of the UNITED STATES."

St. Johns vs. New York, 201 U. S. 633.

Magoun vs. Ill. Trust & Saving Bank, 170 U. S. 283, 292, 293 and 294.

"A tax may be imposed only upon certain callings and trades, for when the State exerts its power to tax, it is not bound to tax all pursuits or all property that may be legitimately taxed for governmental purposes. It would be an intolerable burden if a State could not tax any property or calling, unless at the same time it taxed all property or all callings."

Imposing a tax license on the owners of elevators situated along railroads and not on other elevators was held to be proper classification.

180 U. S. 452 and 469.

"The 14th amendment was not intended to prevent a state from adjusting its system of taxation in all proper and reasonable ways, or through its undoubted power to impose different taxes upon different trades and professions; and imposing a license tax on meat packing houses is not an arbitrary and unreasonable classification which will render the tax void under the 14th amendment as denying the equal protection of the laws; nor is it a denial of equal protection of the law because the tax is not imposed on persons not doing a meat packing house business but selling products thereof or because it is not imposed on persons engaged in packing articles of food other than meat."

Armour Company vs. Lacy, 200 U. S. 226.

Imposing a tax on street railways and not on steam railroads was upheld in 198 U. S. 392.

Imposing a tax on the Meat Packing Business and not on the packing of other articles of food, was sustained.

200 U. S. 226.

Penalizing non-producing venders of milk and not producing venders of milk was upheld in 201 U. S. 633.

"As we have frequently held, the State has a right to classify occupations and to impose different taxes upon different occupations, such has been constantly the practice of Congress under the Internal Revenue Laws."

Cook vs. Marshall Co., 196 U. S. 261-275.

Armour Packing Co. vs. Lacy, 200 U. S. 226-235.

Section 1 of the 14th amendment does not attempt to interfere with the States in their police regulations.

A State may divide its territory into sections and enact different laws for the residents of the different sections without violating Section 1 of the 14th amendment of the Constitution of the UNITED STATES. All that this amendment requires is, that the persons living in the different districts have equal right under the law.

101 U. S. 22-31-32.

A State may provide that the people living in a city of 100,000 population shall have 15 challenges in a jury trial, while other citizens of the same State not living in such city, can only have 10 challenges. Such a law does not violate Section 1 of the 14th amendment to the Constitution of the UNITED STATES.

120 U. S. 68.

The R. S. of the UNITED STATES, Section 5209, is a copy and reproduction of R. S. of Ohio, 3821-35, and although that section of the statute has been before the Supreme Court of the UNITED STATES on numerous occasions, no Court ever questioned its constitutionality.

"Free Banking Institutions" are incorporated under a different act of the legislature than other Banking Institutions and have different powers and different obligations. An examination of "The Free Banking Act," R. S. of Ohio, Section 3821-64 et seq., will show the peculiar characteristic of "Free Banking Institutions" and how radically different their powers and obligations are from other banking institutions. We think these peculiarities were sufficient to justify the legislature in classifying the officers of the same.

## SPECIAL LEGISLATION.

The "Free Banking Act" in question was passed March 21, 1851, and was a valid enactment.

6 O. S. 319.

2 O. S. 607.

The 14th Amendment of the Constitution of the UNITED STATES was adopted July 28, 1868.

The 14th Article of the Constitution of the UNITED STATES is prospective and not retrospective in its operations.

The 14th Amendment was not intended to repeal or annul existing legislation or special laws, existing at the time of its adoption, and when it was adopted the "Free Banking Act" remained as much unimpaired as it was prior to the adoption of the 14th Amendment. It is true Section 30 of the "Free Banking Act of 1851" R. S. 3821-85 was amended April 24, 1879. If the amendment of April 24, 1879, is constitutional, well and good; but if it is unconstitutional the repealing clause falls with the amendment, and the original act is restored. This has been the uniform holding of the Supreme Court of Ohio, who as formerly stated, is the conclusive judge of State enactments.

67 O. S. 303 and 306.

66 O. S. 482 and 488.

60 O. S. 273.

Respectfully submitted,

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